# STATE OF MICHIGAN

# COURT OF APPEALS

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ROGER M. STOPLIN,

Plaintiff-Appellant,

v

TOWNSHIP OF HOLLY,

Defendant-Appellee.

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UNPUBLISHED
March 25, 2004

No. 245074
Oakland Circuit Court
LC No. 2002-041738-CK

Before: Griffin, P.J., and White and Donofrio, JJ.

PER CURIAM.

Plaintiff, Roger M. Stoplin, appeals as of right a grant of summary disposition in favor of defendant, Township of Holly ("the township"), as well as the denial of plaintiff's motion for summary disposition in this zoning ordinance case. On appeal, plaintiff argues the trial court erred when it held that his referendum petition was void and duplicative. Plaintiff also claims that he submitted an adequate number of signatures to compel a referendum election. After reviewing the record, we do not find appellate relief warranted and affirm the trial court's opinion and order. We affirm.

On March 19, 2002, the township adopted three amendments to change the zoning district designation of three parcels of rural property located outside the Holly Village limits. Plaintiff attended the public meeting on March 19, 2002, spoke against the zoning amendments, and requested that the zoning amendments be submitted to the voters. The township published notice of the adoption of the amendments in a local paper on April 10, 2002. The text of the notice published by the township reads as follows:

> NOTICE OF ADOPTION AND SUMMARY HOLLY TOWNSHIP ORDINANCE NUMBER 50
>
> AN AMENDMENT TO THE MAP OF THE TOWNSHIP ORDINANCE NUMBER 50 KNOWN AS THE HOLLY TOWNSHIP ZONING ORDINANCE
>
> NOTICE is hereby given that on March 19, 2002 the Holly Township Board adopted an amendment to the map of the Township Ordinance Number 50 known as the Holly Township Zoning Ordinance.

> The zoning district designation of the following described parcel of property has been changed as follows:
>
> **Parcel 01-28-376-004 from R-1 and RM-1 to C-2 and RM-2**
>
> **Parcel 01-28-126-007 from RM-1 and SR to R-2 and C-2**
>
> **Parcel 01-33-126-001 from R-1 to RM-1 with the Understanding that all of the Land South of the Flood Plain would not be Developed.**[1]
>
> Said amendment was adopted in accordance with the provisions of Act 184, Public Acts of 1943 as amended and in accordance with provisions of Holly Township Zoning Ordinance Number 50.
>
> The ordinance is to be effective upon publication of this notice and summary as provided by law. A true and complete copy of Holly Township Zoning Ordinance No. 50 can be inspected or obtained at the office of the Holly Township Clerk, 102 Civic Drive, Holly, Michigan, 48442, at all times said office is open for business.
>
> Karin S. Winchester
>
> Holly Township Clerk

The following day, plaintiff filed a notice of intent to file a petition for submission of the amendments of the three parcels to the electors in the township. On May 10, 2002, plaintiff submitted a petition form including the signatures of 335 registered voters residing in the township but outside the limits of the cities and villages. After receiving the petition, the township clerk, Karin Winchester, determined that plaintiff's petition was void and that no election would be scheduled.

On June 19, 2002, plaintiff filed a complaint and a motion for preliminary injunction arguing that Winchester wrongfully determined the petition was void. Plaintiff specifically requested the court declare plaintiff's petition adequate and sufficient to submit the zoning ordinance amendments to the electors via referendum, order a hearing to determine the rights of the parties with respect to the adequacy of the petition, and to enjoin defendant from beginning any construction or any other action on the subject parcels during the pendency of the proceedings.

The parties filed cross-motions for summary disposition. Plaintiff argued he had complied with all the statutory requirements to challenge the zoning ordinance amendments by special election and sought a declaration that the petition was valid thus compelling a vote. Defendant countered that because there were three parcels each with separate amendments, it

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[1] [Emphasis in original.] This is clearly three separate re-zonings.

was incumbent upon plaintiff to submit individual petitions for each parcel, and since he only submitted one petition, the petition was void. After entertaining oral argument, the court issued a written opinion granting defendant's motion and denying plaintiff's motion finding plaintiff's petition defective. The court stated that a single referendum petition cannot lawfully join more than one zoning ordinance amendment. It is from this order that plaintiff now appeals.

Plaintiff first argues that because defendant gave statutory notice of only one amendment, his single petition to hold one referendum election was proper. We disagree. A trial court's decision on a motion for summary disposition in an action for a declaratory judgment is subject to review de novo. *Breighner v Michigan High School Athletic Ass'n, Inc*, 255 Mich App 567, 570, 662 NW2d 413 (2003). A party's claim to summary disposition based on MCR 2.116(C)(10) tests the factual sufficiency of the complaint and must be supported or opposed by affidavits, depositions, admissions, or other documentary evidence. *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999). Where the proffered evidence fails to establish that a disputed material issue of fact remains for trial, summary disposition is properly granted as a matter of law. MCR 2.116(C)(10), (G)(4), (I)(1), (I)(2); *Maiden, supra*; *Auto-Owners Ins v Allied Adjusters & Appraisers, Inc*, 238 Mich App 394, 397; 605 NW2d 685 (1999).

Plaintiff argues in his brief on appeal that based upon the publication by the township, he relied on what he believed to be one notice of a single amendment of the zoning ordinances at issue when he filed only one petition. After carefully reviewing the text of the public notice we find the township's notice technically defective. The township was required to publish notice to the public pursuant to MCL 125.281a. The notice at issue was written in the singular and referenced only a single ordinance amendment despite listing all three parcels affected by the three amendments. At a minimum, the notice should have referenced the multiple amendments in the enactment of the multiple zoning ordinances affecting all three parcels.

Notwithstanding our conclusion that the notice was technically defective, we find the defect harmless as it relates to plaintiff for the reason that plaintiff had actual notice of the multiple amendments. Plaintiff was in attendance at the public hearing when the separate ordinances were adopted. He both spoke against the amendments and requested their submission to the voters. Also, his knowledge of the multiple amendments is reflected in his petition language referencing "ordinances" in the plural. The record plainly illustrates plaintiff had actual notice of the multiple amendments. Since the purpose of MCL 125.281a is to provide constructive notice to the public, a determination of defective notice has no effect as it relates to plaintiff who enjoyed actual notice.

Further, we find plaintiff's single petition joining three amendments improper. Our Supreme Court held in *Reva v Twp of Portage*, 356 Mich 381, 96 NW2d 778 (1959) that "2 amendments or 1 amendment and a part of another cannot be joined in 1 referendum." *Id*., at 385. Here, there were three amendments and three associated parcels of land at issue. Under the clear rule articulated in *Reva*, plaintiff cannot group more than one amendment into one petition for referendum. Therefore, under *Reva*, plaintiff's single petition joining three amendments was inappropriate.

Plaintiff also urges us to set forth the proper method of determining the number of signatures required for a zoning referendum. In light of the foregoing we need not reach this issue.

Affirmed.

/s/ Richard Allen Griffin
/s/ Helene N. White
/s/ Pat M. Donofrio